

HOUSE BILL NO. 130

INTRODUCED BY M. CAMPBELL

BY REQUEST OF THE GOVERNOR

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5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE WATER ADJUDICATION FEE; PROVIDING FOR
6 THE REFUND OF UP TO \$400 OF WATER ADJUDICATION FEES PAID BY AN OWNER WHO WAS
7 OBLIGATED TO PAY NOT MORE THAN \$400 IN AGGREGATE WATER ADJUDICATION FEES; PROHIBITING
8 THE OFFSET OF OTHER AMOUNTS DUE THE STATE AGAINST THE REFUND; PROVIDING AN
9 APPROPRIATION FOR THE AMOUNT OF THE REFUNDS; PROVIDING AN APPROPRIATION FOR THE
10 COST OF ADMINISTERING THE WATER ADJUDICATION FEE REFUND; TRANSFERRING \$15.9 MILLION
11 FROM THE GENERAL FUND TO THE WATER ADJUDICATION ACCOUNT; AMENDING SECTIONS 17-7-102,
12 85-2-271, 85-2-272, 85-2-276, AND 85-2-283, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN
13 APPLICABILITY DATE, AND A TERMINATION DATE."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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17 NEW SECTION. **Section 1. Water adjudication fee refund -- appropriation.** (1) The department of
18 revenue shall refund up to \$400 of water adjudication fees to owners who paid not more than \$400 in aggregate
19 water adjudication fees pursuant to 85-2-276.

20 (2) There is appropriated \$4.6 million from the general fund to the department of revenue for the 2009
21 biennium for the purpose of providing water adjudication fee refunds as provided in subsection (1).
22

23 NEW SECTION. **Section 2. Water adjudication fee refund -- method of refunding -- no offset.** (1)
24 Except as provided in subsection (2), the department of revenue shall refund the fees by state warrant payable
25 to the entity who paid the fees as shown by the payment instrument.

26 (2) If the department of revenue cannot determine who paid the fees, it shall send notice and a form
27 prescribed by the department of revenue for claiming the refund to the person or persons who were the owner
28 or owners of the water right, as defined in 85-2-272, on the date the water adjudication fee was paid as shown
29 in the records of the department of natural resources and conservation.

30 (3) (a) Subject to subsection (3)(b), a claim for refund may be filed by the owner or owners described

1 in subsection (2). The claim for refund must be executed under penalty of false swearing and include the
2 information the department of revenue requires.

3 (b) Subject to the limitation that aggregate claims for refund with respect to any payment of the water
4 adjudication fee cannot exceed the greater of the amount paid or \$400:

5 (i) the personal representative of the estate of a deceased individual entitled to a refund may execute
6 and file the claim for refund on behalf of the deceased individual; and

7 (ii) the successor in interest of an entity entitled to a refund that has been dissolved or merged may
8 execute and file the claim for refund on behalf of the dissolved or merged entity.

9 (c) Nothing in subsection (3)(b)(i) or (3)(b)(ii) prevents the department of revenue from allowing other
10 individuals or entities that did not pay the water adjudication fee and that the department of revenue determines
11 are entitled to the refund, in lieu of payment of the person who paid the fee, to:

12 (i) file a claim for refund; or

13 (ii) be paid the refund on behalf of the person who paid the fee.

14 (4) A claim for refund described in subsections (2) and (3) must be filed with the department of revenue
15 on or before December 31, 2007, unless the department of revenue, for good cause shown, grants a reasonable
16 extension of time for filing.

17 (5) The department of revenue may not offset the refund provided in this section against any other
18 amount due to the state pursuant to 15-30-310, 15-70-110, 15-72-113, 17-4-105, or 39-51-1307.

19 (6) The definition of owner provided in 85-2-273 does not apply to the issuance of a refund pursuant to
20 [sections 1 and 2].

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22 **NEW SECTION. Section 3. Funds transfer.** (1) Subject to subsection (2), there is transferred \$15.9
23 million from the general fund to the water adjudication account provided for in 85-2-280 to be used for the sole
24 purpose of completing the statewide water adjudication by 2020. Subject to subsection (2), the transfer must take
25 place on July 1, 2007.

26 (2) In order to maintain an adequate ending fund balance, if at any time during the 2009 biennium the
27 office of budget and program planning projects a 2009 biennium unreserved ending fund balance of less than
28 \$100 million, the office of budget and program planning may reduce the above one-time-only transfer. The
29 department will transfer funds on a schedule approved by the office of budget and program planning that enables
30 statewide management goals for cash flow and fund balances.

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2 **NEW SECTION. Section 4. Appropriations.** (1) There is appropriated from the general fund to the
3 department of natural resources and conservation \$231,000 for the 2009 biennium for administration related to
4 refunding the water adjudication fee.

5 (2) There is appropriated from the general fund to the department of revenue \$269,000 for the 2009
6 biennium for administration related to refunding the water adjudication fee.

7

8 **Section 5.** Section 17-7-102, MCA, is amended to read:

9 **"17-7-102. Definitions.** As used in this chapter, the following definitions apply:

10 (1) "Additional services" means different services or more of the same services.

11 (2) "Agency" means all offices, departments, boards, commissions, institutions, universities, colleges,
12 and any other person or any other administrative unit of state government that spends or encumbers public
13 money by virtue of an appropriation from the legislature under 17-8-101.

14 (3) "Approving authority" means:

15 (a) the governor or the governor's designated representative for executive branch agencies;

16 (b) the chief justice of the supreme court or the chief justice's designated representative for judicial
17 branch agencies;

18 (c) the speaker for the house of representatives;

19 (d) the president for the senate;

20 (e) appropriate legislative committees or a designated representative for legislative branch agencies;

21 or

22 (f) the board of regents of higher education or its designated representative for the university system.

23 (4) (a) "Base budget" means the resources for the operation of state government that are of an ongoing
24 and nonextraordinary nature in the current biennium. The base budget for the state general fund and state special
25 revenue funds may not exceed that level of funding authorized by the previous legislature.

26 (b) The term does not include funding for water adjudication if the accountability benchmarks contained
27 in 85-2-271 are not met.

28 (5) "Budget amendment" means a temporary appropriation as provided in Title 17, chapter 7, part 4.

29 (6) "Emergency" means a catastrophe, disaster, calamity, or other serious unforeseen and unanticipated
30 circumstance that has occurred subsequent to the time that an agency's appropriation was made, that was clearly

1 not within the contemplation of the legislature and the governor, and that affects one or more functions of a state
2 agency and the agency's expenditure requirements for the performance of the function or functions.

3 (7) "Funds subject to appropriation" means those funds required to be paid out of the treasury as set
4 forth in 17-8-101.

5 (8) "Necessary" means essential to the public welfare and of a nature that cannot wait until the next
6 legislative session for legislative consideration.

7 (9) "New proposals" means requests to provide new nonmandated services, to change program
8 services, to eliminate existing services, or to change sources of funding. For purposes of establishing the present
9 law base, the distinction between new proposals and the adjustments to the base budget to develop the present
10 law base is to be determined by the existence of constitutional or statutory requirements for the proposed
11 expenditure. Any proposed increase or decrease that is not based on those requirements is considered a new
12 proposal.

13 (10) "Present law base" means that level of funding needed under present law to maintain operations and
14 services at the level authorized by the previous legislature, including but not limited to:

15 (a) changes resulting from legally mandated workload, caseload, or enrollment increases or decreases;

16 (b) changes in funding requirements resulting from constitutional or statutory schedules or formulas;

17 (c) inflationary or deflationary adjustments; and

18 (d) elimination of nonrecurring appropriations.

19 (11) "Program" means a principal organizational or budgetary unit within an agency.

20 (12) "Requesting agency" means the agency of state government that has requested a specific budget
21 amendment.

22 (13) "University system unit" means the board of regents of higher education; office of the commissioner
23 of higher education; university of Montana, with campuses at Missoula, Butte, Dillon, and Helena; Montana state
24 university, with campuses at Bozeman, Billings, Havre, and Great Falls; the agricultural experiment station, with
25 central offices at Bozeman; the forest and conservation experiment station, with central offices at Missoula; the
26 cooperative extension service, with central offices at Bozeman; the bureau of mines and geology, with central
27 offices at Butte; the fire services training school at Great Falls; and the community colleges at Miles City,
28 Glendive, and Kalispell."

29

30 **Section 6.** Section 85-2-271, MCA, is amended to read:

1 **"85-2-271. (Temporary) Benchmarks -- action taken if not met.** (1) The completion of initial claims
 2 examination is of a higher priority than reexamination of claims that were subject to the verification process unless
 3 the chief water judge issues an order making reexamination a higher priority, as provided in subsection (3)(b).

4 (2) There are approximately 57,000 water right claims that were filed pursuant to 85-2-212 that must be
 5 examined. There are approximately 98,000 claims that were verified that may be reexamined using the supreme
 6 court examination rules if the water court receives a petition and issues an order as provided in 85-2-282 or the
 7 water court issues an order on its own initiative.

8 (3) (a) The water court shall prioritize basins for the purpose of claims examination and reexamination
 9 by the department.

10 (b) The chief water judge has the authority to order that reexamination be completed for a certain basin
 11 in a higher priority than claims examination. If the chief water judge issues an order requiring the department to
 12 reexamine claims rather than examining claims, the number of claims that were reexamined must be counted
 13 against the amount of claims that the department is required to examine for that period.

14 (4) (a) The cumulative benchmarks that are provided in subsection (4)(b) must be met. If the benchmarks
 15 are not met, the fee contained in 85-2-276 that is attached to a water right for the purpose of funding the
 16 adjudication may not be assessed the following even-numbered year and money for water adjudication may not
 17 be included in the department's base budget. All claims must be examined by June 30, 2015.

18 (b) The cumulative benchmarks are as follows:

19 Date	Total Number of Claims Examined
20 December 31, 2006	8,000
21 December 31, 2008	19,000
22 December 31, 2010	31,000
23 December 31, 2012	44,000
24 June 30, 2015	57,000

25 (Terminates June 30, 2020--sec. 18, Ch. 288, L. 2005.)"

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27 **Section 7.** Section 85-2-272, MCA, is amended to read:

28 **"85-2-272. (Temporary) Definitions.** For the purposes of 85-2-270 through 85-2-273, 85-2-276, ~~and~~
 29 85-2-279 through 85-2-283, and [sections 1 and 2], the following definitions apply:

30 (1) "Calculated volume" means the feasible volume given the flow rate and period of use.

1 (2) "Person" means an individual, corporation, partnership, association, firm, or other legal entity.

2 (3) "Water right" means a legal right to the beneficial use of water as recorded in the centralized water
 3 recording system by a water court decree, provisional permit, ground water certificate, filed exempt right, Powder
 4 River declaration, statement of claim, stockwater permit, temporary provisional permit, or 1962 to 1973 ground
 5 water filings as recorded with the department or that portion of a water reservation that has been put to beneficial
 6 use. This definition applies only to the use of the term for the purposes of assessing the fee, and for the purposes
 7 of 85-2-270 through 85-2-273, 85-2-276, and 85-2-279 through 85-2-283, and for the purposes of providing a
 8 refund pursuant to [sections 1 and 2]. (Terminates June 30, 2020--sec. 18, Ch. 288, L. 2005.)"

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10 **Section 8.** Section 85-2-276, MCA, is amended to read:

11 **"85-2-276. (Temporary) Water adjudication fees -- exceptions.** (1) (a) Except as provided in
 12 ~~subsection~~ subsections (1)(c) and (11), a water adjudication fee is authorized and directed to be imposed by the
 13 department of revenue on all water rights.

14 (b) Except as provided in 85-2-271, 85-2-280, and subsections (1)(c), ~~and (10)~~, and (11) of this section,
 15 an owner shall pay a biennial fee for the purpose of funding Montana's water adjudication based on the fees
 16 established in subsections (4) through (7) of this section.

17 (c) The water adjudication fee may not be imposed on federal water rights and tribal reserved and
 18 aboriginal claims to water.

19 (2) The water adjudication fee is due on January 31 of even-numbered years. The penalty and interest
 20 provisions contained in 15-1-216 apply to late payments of the fee.

21 (3) (a) Subject to subsection (3)(b), the department of revenue may withhold revenue equal to the actual
 22 cost of collecting the water adjudication fee.

23 (b) The department of revenue may not withhold more than 5% of the revenue generated.

24 (4) (a) An owner for the purposes described in subsections (4)(b) through (4)(f) shall pay according to
 25 a graduated scale. The number of water rights for which a fee must be paid on a per-purpose basis is capped
 26 at 20 water rights a person for each graduated level.

27 (b) ~~For~~ Subject to subsection (11), for a commercial water right with a claimed or calculated volume that
 28 is:

29 (i) 0 acre-feet to 100 acre-feet, the fee is \$20;

30 (ii) greater than 100 acre-feet and less than or equal to 5,000 acre-feet, the fee is \$1,000; and

- 1 (iii) greater than 5,000 acre-feet, the fee is \$2,000.
- 2 (c) ~~For~~ Subject to subsection (11), for an industrial water right with a claimed or calculated volume that
- 3 is:
- 4 (i) 0 acre-feet to 1,000 acre-feet, the fee is \$20;
- 5 (ii) greater than 1,000 acre-feet and less than or equal to 4,000 acre-feet, the fee is \$1,000; and
- 6 (iii) greater than 4,000 acre-feet, the fee is \$2,000.
- 7 (d) ~~For~~ Subject to subsection (11), for a mining water right with a claimed or calculated volume that is:
- 8 (i) 0 acre-feet to 1,000 acre-feet, the fee is \$20;
- 9 (ii) greater than 1,000 acre-feet and less than or equal to 4,000 acre-feet, the fee is \$1,000; and
- 10 (iii) greater than 4,000 acre-feet, the fee is \$2,000.
- 11 (e) ~~For~~ Subject to subsection (11), for a municipal water right with a claimed or calculated volume that
- 12 is:
- 13 (i) 0 acre-feet to 1,000 acre-feet, the fee is \$20;
- 14 (ii) greater than 1,000 acre-feet and less than or equal to 4,000 acre-feet, the fee is \$1,000; and
- 15 (iii) greater than 4,000 acre-feet, the fee is \$2,000.
- 16 (f) ~~For~~ Subject to subsection (11), for a power generation water right, both consumptive and
- 17 nonconsumptive, with a claimed or calculated volume that is:
- 18 (i) 0 acre-feet to 100,000 acre-feet, the fee is \$20;
- 19 (ii) greater than 100,000 acre-feet and less than or equal to 1 million acre-feet, the fee is \$1,000; and
- 20 (iii) greater than 1 million acre-feet, the fee is \$2,000.
- 21 (5) Except for instream flow water rights used for irrigation purposes or for the purposes identified in
- 22 subsection (4) and subject to subsection (11), an instream flow water right or an instream flow water reservation,
- 23 with a claimed or calculated volume that is:
- 24 (a) 0 acre-feet to 50,000 acre-feet, the fee is \$20;
- 25 (b) greater than 50,000 acre-feet and less than or equal to 1 million acre-feet, the fee is \$1,000; and
- 26 (c) greater than 1 million acre-feet, the fee is \$2,000.
- 27 (6) ~~The~~ Subject to subsection (11), the fee for an irrigation water right or irrigation claim that is part of
- 28 an irrigation district, ditch company, canal company, irrigation project, water user's association, or other organized
- 29 group with the purpose of allocating irrigation water is \$20 a user, with the fee capped at 40 users. The fee must
- 30 be paid by the user. If an irrigation district, ditch company, or water user's association has more than 40 users,

1 the fee may not exceed \$800 and must be split equally among the users.

2 (7) ~~The~~ Subject to subsection (11), the fee for all water rights that are not subject to subsections (4)
3 through (6) is \$20. The fee is capped at 20 water rights a person for purposes that are not addressed in
4 subsections (4) through (6).

5 (8) The fees established in subsections (4) through (7) apply to all water rights on record with the
6 department that are not withdrawn or terminated.

7 (9) A person may file an administrative appeal with the department to contest the total amount of the fee
8 assessed against the person or a fee imposed based on incorrect ownership records.

9 (10) Fees authorized in this section may not be assessed after June 30, 2014.

10 (11) The department of revenue may not assess a water adjudication fee against an owner whose
11 biennial fee is determined by the department of natural resources and conservation to be \$400 or less.
12 (Terminates June 30, 2020--sec. 18, Ch. 288, L. 2005.)"

13

14 **Section 9.** Section 85-2-283, MCA, is amended to read:

15 **"85-2-283. (Temporary) Rulemaking authority.** The department may adopt rules for the purpose of
16 implementing 85-2-270 through 85-2-273, 85-2-276, ~~and~~ 85-2-279 through 85-2-283, and [sections 1 and 2].
17 (Terminates June 30, 2020--sec. 18, Ch. 288, L. 2005.)"

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19 NEW SECTION. **Section 10. Effective date.** [This act] is effective on passage and approval.

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21 NEW SECTION. **Section 11. Applicability.** [This act] applies to water adjudication fees paid before [the
22 effective date of this act].

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24 NEW SECTION. **Section 12. Termination.** (1) [Sections 7 and 9] terminate June 30, 2009.

25 (2) [Sections 5, 6, and 8] terminate June 30, 2020.

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- END -